

LEOFF 2

Duty-related Disability

Duty disability benefits in LEOFF 2 are distinct from those in plan 1 in that they are an earned retirement benefit rather than a fixed percent of pay regardless of time in service.

LEOFF 2 members who meet the various duty disability standards are eligible for an earned retirement benefit, worker's compensation benefits, possibly Social Security benefits, and supplemental disability insurance coverage if enrolled. If there is a question of employer liability in a disability case, members also have the right to bring legal action against their employer.

This paper will provide an overview of the various disability standards and benefits.

LEOFF 2 Duty Disability Standard (RCW 41.26.470)

A member who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three.

Early Hire LEOFF 2 Disability Scenario

43 years of age, 20 years of service, \$70,000 salary
Actuarial reduction factor for a member 10 years from retirement age: .3921
Benefit: $\$68,068 \times 20 \times 2\% \times .3921 = \$10,676$ per year or \$890 per month

Average LEOFF 2 Member Disability Scenario

38 years of age, 10 years of service, \$59,600 salary
Actuarial reduction factor for a member 15 years from retirement age: .2541
Benefit: $\$57,287 \times 10 \times 2\% \times .2541 = \$2,911$ per year or \$243 per month

Disability Leave Supplement for a Temporary Total Disability (RCW 41.04.500)

Employers of LEOFF members shall provide a disability leave supplement to employees who qualify for payments under the Department of Labor and Industries Worker's Compensation program (RCW 51.32.090) due to a temporary total disability.

Disability Leave Supplement Amount (RCW 41.04.505)

The disability leave supplement shall be an amount which, when added to the amount payable under RCW 51.32.090 will result in the employee receiving the same pay they would have received for full time active service, taking into account that industrial insurance payments are not subject to federal income or social security taxes.

This benefit is paid for through use of employee's sick and annual leave accumulations and employer payments: ½ employee; ½ employer.

Disability Leave Supplement Estimates		
	Early Hire LEOFF 2	Average LEOFF 2
Monthly Salary	\$5,833	\$4,967
L&I Tax-free equivalent ¹	\$4,380	\$4,380
Supplement amount	\$1,453	\$587

¹Assumes a 15% tax rate.

Employer Liability

Beyond these benefits LEOFF 2 members are eligible to receive, they also have the right to sue their employer if their disability is a result of negligence on the part of their employer (RCW 41.26.280 and RCW 41.26.281)

Other Issues

Because LEOFF 1 members are not eligible for Worker's Compensation, and because their duty-disability retirement benefit is awarded in the nature of worker's compensation, it is tax free. In comparison, LEOFF 2 members are eligible for worker's compensation, and their duty-disability retirement benefit is an earned retirement benefit. As a result, their duty-disability retirement benefit is not tax free.

Lump-Sum Alternative

At this time there are no LEOFF 2 members receiving a duty-disability retirement benefit. Because of the age and service characteristics of LEOFF 2 members who have been disabled, the actuarial reduction results in a modest duty disability retirement allowance. Up to this date, all members have opted for a refund of 150% of their accumulated contributions and interest in lieu of a duty disability retirement benefit.

The duty-disabled 43 year old with 20 years of service and \$70,000 salary would be eligible to withdraw \$230,000.

The duty-disabled 38 year old with 10 years of service and \$59,600 salary would be eligible to withdraw \$71,000.

Worker's Compensation:

Time-Loss Benefits

Those unable to work as a result of injury or disease, will be paid a portion of their regular wages. These time-loss compensation payments will not provide the same income as when they were working (this is where the disability leave supplement applies.)

The amount of a time-loss benefit is 60 to 75 percent of a worker's gross income (includes wages/salary plus medical, dental, and vision benefits, room and board, bonuses, and tips). The percentage depends on the worker's marital status and number of dependents. These benefits cannot exceed 120 percent of the state's average wage ($\$37,229 \times 1.2 = \$44,675$).

Awards for Partial Permanent Disabilities

If an injury or occupational disease causes permanent loss of bodily function, the injured worker will receive a permanent partial disability award. The amount received for any physical loss is established by the Legislature and does not include compensation for pain and suffering. There are two types of permanent partial disabilities:

- Specified disabilities: Some disabilities have awards that are already set by law. These are easily quantified losses, such as loss of your vision or hearing, or the loss of an eye, leg, foot, toe, arm or finger by amputation (see Appendix A.)
- Unspecified disabilities: These disabilities include every other type of impairment caused by an on-the-job injury or occupational illness, including the partial loss of function to a limb.

Rating Unspecified Disabilities

The degree of a partial loss of function is determined by a disability rating. These ratings are conducted either by the attending physician, or by one or more independent medical examiners using established medical standards and guidelines. Normally, ratings are performed after all services have been completed, the injured worker is medically stable and no further treatment is appropriate.

A permanent partial disability award is not jeopardized by working. Workers are encouraged to return to their job as soon as their doctor releases them for work. Any permanent partial disability award is based on the degree of damage suffered, not on whether you can work.

Pensions for Total Permanent Disabilities

If an accident results in the loss or total paralysis of both legs or arms, one leg and one arm, or a total loss of eyesight, a worker is eligible for a pension by law, even if able to return to work.

If vocational and medical evaluations determine that an injury prevents a worker from ever becoming gainfully employed, they may be paid a monthly pension for life. However, this type of "non-statutory" pension may not be payable if a worker is able to return to work.

Pension benefits are paid monthly. They are based on the amount of time-loss compensation to which a worker is entitled. As with time-loss compensation benefits, the amount a worker is eligible to receive depends on factors such as wages, marital status, number of dependents, health care benefits, Social Security benefits and the state's average wage at the time of your injury. In some cases, a pension benefit amount may be reduced for previously paid permanent partial disability awards.

Pension Survivor Options

If a worker is granted an L&I pension, they can choose one of these survivor options:

- An unreduced single life pension.
- A reduced joint and 50% pension.
- A further reduced joint and 100% pension.

Social Security Disability:

The definition of disability under Social Security is different than other programs. Social Security pays only for total disability. No benefits are payable for partial disability or for short-term disability.

Disability under Social Security is based on an individual's inability to work. An individual is considered disabled under Social Security rules if they cannot do work they did before and they cannot adjust to other work because of their medical condition(s). An individual's disability must also last or be expected to last for at least one year or to result in death.

This is a strict definition of disability. Social Security program rules assume that working families have access to other resources to provide support during periods of short-term disabilities, including workers' compensation, insurance, savings and investments.

Social Security Standard for Disability

Those applying for a Social Security disability benefit are evaluated via a progressive series of question beginning with...

... Are they working? Those currently working and earning more than \$780 a month generally are not disabled. For those not working...

... Is their condition "severe"? A condition must interfere with basic work-related activities to be a disability. If it does not, there is no disability. If it does...

... Is their condition on the list of disabling conditions? Social Security maintains a list of medical conditions that automatically mean a worker is disabled. If the condition is not on the list, Social Security determines if it is of equal severity to a condition on the list. If it is, the worker is disabled. If it is not...

... Can they do the work they did previously? If the condition is severe but not at the same or equal level of severity as a medical condition on the list, then Social Security determines if it interferes with their ability to do the work they did previously. If it doesn't, the claim will be denied. If it does...

... Can they do any other type of work? If they cannot adjust to other work, their claim will be approved. If they can adjust to other work, their claim will be denied.

Estimated Social Security Disability Award	
Early Hire LEOFF 2	\$1,629 / month
LEOFF 2 Average	\$1,550 / month

How Much Work Is Needed?

In addition to meeting the Social Security definition of disability, a worker must have worked long enough--and recently enough--under Social Security to qualify for disability benefits. Social Security work credits are based on total yearly wages or self-employment income. Up to four credits can be earned each year. The amount needed for a credit changes from year to year. For 2002, \$870 of wages will earn one credit, and \$3,480 of wages will earn the maximum four credits.

The number of work credits needed to qualify for disability benefits depends on the age of disability. Generally, a workers needs 40 credits, 20 of which were earned in the last 10 years ending with the year they become disabled. However, younger workers may qualify with fewer credits.

Appendix A

L&I AWARDS FOR LOSS BY AMPUTATION	
	July 1, 2002
Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium)	\$94,793
Of leg at or above knee joint with functional stump	\$85,313
Of leg below knee joint	\$75,834
Of leg at ankle (Syme)	\$66,355
Of foot at mid-metatarsals	\$33,177
Of great toe with resection of metatarsal bone	\$19,906
Of great toe at metatarsophalangeal joint	\$11,944
Of great toe at interphalangeal joint	\$6,320
Of lesser toe (2nd to 5th) with resection of metatarsal bone	\$7,267
Of lesser toe at metatarsophalangeal joint	\$3,539
Of lesser toe at proximal interphalangeal joint	\$2,623
Of lesser toe at distal interphalangeal joint	\$664
Of arm at or above the deltoid insertion or by disarticulation at the shoulder	\$94,793
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon	\$90,053
Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand	\$85,313
Of all fingers except the thumb at metacarpophalangeal joints	\$51,188
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	\$34,125
Of thumb at interphalangeal joint	\$17,063
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone	\$21,328
Of index finger at proximal interphalangeal joint	\$17,063
Of index finger at distal interphalangeal joint	\$9,384
Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	\$17,063
Of middle finger at proximal interphalangeal joint	\$13,650
Of middle finger at distal interphalangeal joint	\$7,678
Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	\$8,531
Of ring finger at proximal interphalangeal joint	\$6,825
Of ring finger at distal interphalangeal joint	\$4,266
Of little finger at metacarpophalangeal joint or with resection of metacarpal bone	\$4,266
Of little finger at proximal interphalangeal joint	\$3,413
Of little finger at distal interphalangeal joint	\$1,706